

110TH CONGRESS
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H. R. 6330

To provide for regulation of certain transactions involving energy commodities, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act and the Federal Power Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 2008

Mr. STUPAK (for himself, Mr. LARSON of Connecticut, Mr. MCHUGH, Mr. ALLEN, Mr. UDALL of Colorado, Mr. CARNEY, Mr. KILDEE, Ms. SUTTON, Mr. HINCHEY, Mr. COURTNEY, Mr. DONNELLY, Mr. ALTMIRE, Mr. FATTAH, Ms. SCHWARTZ, Mr. DEFazio, Mr. VISCLOSKEY, Mr. WELCH of Vermont, Mrs. DAVIS of California, Mr. BISHOP of New York, Ms. SCHAKOWSKY, Ms. SLAUGHTER, Mr. INSLEE, Mrs. CAPPS, Mr. BAIRD, Mr. THOMPSON of California, Ms. HIRONO, Mr. WILSON of Ohio, Mr. MCGOVERN, Mr. CHANDLER, Mrs. MCCARTHY of New York, Mr. MICHAUD, Mr. HILL, Mr. PATRICK J. MURPHY of Pennsylvania, Ms. RICHARDSON, Mr. HODES, Mr. BLUMENAUER, Mr. GRIJALVA, Mr. PASCRELL, Mr. ROSS, Ms. SOLIS, Mr. DOYLE, Ms. BALDWIN, Mr. CONYERS, Mr. DELAHUNT, Mr. PASTOR, and Mr. CAPUANO) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for regulation of certain transactions involving energy commodities, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act and the Federal Power Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prevent Unfair Manip-
 5 ulation of Prices Act of 2008”.

6 **SEC. 2. REGULATION OF CERTAIN TRANSACTIONS IN DE-**
 7 **RIVATIVES INVOLVING ENERGY COMMOD-**
 8 **ITIES.**

9 (a) ENERGY COMMODITY DEFINED.—Section 1a of
 10 the Commodity Exchange Act (7 U.S.C. 1a) is amended—

11 (1) in paragraph (14), by inserting “, an energy
 12 commodity,” after “excluded commodity”;

13 (2) by redesignating paragraphs (13) through
 14 (21) and paragraphs (22) through (34) as para-
 15 graphs (14) through (22) and paragraphs (24)
 16 through (36), respectively;

17 (3) by inserting after paragraph (12) the fol-
 18 lowing:

19 “(13) ENERGY COMMODITY.—The term ‘energy
 20 commodity’ means—

21 “(A) coal;

22 “(B) crude oil, gasoline, diesel fuel, jet
 23 fuel, heating oil, and propane;

24 “(C) electricity;

25 “(D) natural gas; and

1 “(E) any other substance (other than an
2 excluded commodity, a metal, or an agricultural
3 commodity) that is used as a source of energy,
4 as the Commission, in its discretion, deems ap-
5 propriate.”; and

6 (4) by inserting after paragraph (22) (as so re-
7 designated by paragraph (2) of this subsection) the
8 following:

9 “(23) INCLUDED ENERGY TRANSACTION; BI-
10 LATERAL ENERGY TRANSACTION.—The term ‘in-
11 cluded energy transaction’ means a contract, agree-
12 ment, or transaction in an energy commodity for fu-
13 ture delivery that provides for a delivery point of the
14 energy commodity in the United States, or that is
15 transacted on a computer terminal located in the
16 United States. The term ‘bilateral included energy
17 transaction’ means an included energy transaction
18 that is executed or traded other than on or through
19 a trading facility.”.

20 (b) EXTENSION OF REGULATORY AUTHORITY TO
21 SWAPS INVOLVING INCLUDED ENERGY TRANSACTIONS.—

22 Section 2(g) of such Act (7 U.S.C. 2(g)) is amended—

23 (1) by inserting “or an energy commodity”
24 after “agricultural commodity”; and

1 (2) by inserting “not an included energy trans-
2 action and is” before “—”.

3 (c) EXEMPTION FOR TRANSACTIONS IN ENERGY
4 COMMODITIES THAT ARE NOT INCLUDED ENERGY
5 TRANSACTIONS.—Section 2 of such Act (7 U.S.C. 2) is
6 amended by adding at the end the following:

7 “(j) EXEMPTION FOR TRANSACTIONS IN ENERGY
8 COMMODITIES WHICH ARE NOT INCLUDED ENERGY
9 TRANSACTIONS.—This Act shall not apply to a contract,
10 agreement, or transaction in an energy commodity which
11 is not an included energy transaction.”.

12 (d) EXTENSION OF REGULATORY AUTHORITY TO IN-
13 CLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS
14 OF TRADE.—Section 4 of such Act (7 U.S.C. 6) is amend-
15 ed—

16 (1) in subsection (a), by inserting “, and which
17 is not an included energy transaction” after “terri-
18 tories or possessions” the 2nd place it appears; and

19 (2) in subsection (b), by adding at the end the
20 following: “The preceding sentence shall not apply
21 with respect to included energy transactions.”.

22 (e) LIMITATION OF CFTC AUTHORITY TO PROVIDE
23 CERTAIN EXEMPTIONS WITH RESPECT TO INCLUDED
24 ENERGY TRANSACTIONS.—

1 (1) IN GENERAL.—Section 4(c) of such Act (7
2 U.S.C. 6(c)) is amended by adding at the end the
3 following:

4 “(6) The Commission may not exempt any in-
5 cluded energy transaction from the requirements of
6 subsection (a), unless the Commission provides 60
7 days advance notice to the Congress and solicits
8 public comment about the provision of the exemp-
9 tion.”.

10 (2) NULLIFICATION OF NO-ACTION LETTER EX-
11 EMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE
12 TO INCLUDED ENERGY TRANSACTIONS.—Beginning
13 180 days after the date of the enactment of this Act,
14 any exemption provided by the Commodity Futures
15 Trading Commission that has allowed included en-
16 ergy transactions (as defined in section 1a(13) of
17 the Commodity Exchange Act) to be conducted with-
18 out regard to the requirements of section 4(a) of
19 such Act shall be null and void.

20 (f) REQUIREMENT TO ESTABLISH UNIFORM POSI-
21 TION LIMITS FOR INCLUDED ENERGY TRANSACTIONS.—

22 Section 4a(a) of such Act (7 U.S.C. 6a(a)) is amended—

23 (1) by inserting after the 2nd sentence the fol-
24 lowing: “With respect to included energy trans-
25 actions, the Commission shall fix limits on the ag-

gregate number of positions which may be held by any person for the prompt month, and the aggregate number of positions which may be held by any person for each month, and the aggregate number of positions which may be held by any person for all months, in all markets subject to the jurisdiction of the Commission.”; and

(2) in the 4th sentence by inserting “, consistent with the 3rd sentence,” after “Commission”.

(g) SWAPS INVOLVING INCLUDED ENERGY TRANSACTIONS EXCLUDED FROM EXEMPTION FOR BONA FIDE HEDGING TRANSACTIONS.—Section 4a(c) of such Act (7 U.S.C. 6a(c)) is amended by adding at the end the following: “The preceding provisions of this subsection shall not apply to swaps that involve an included energy transaction.”.

(h) SPECIAL RULES APPLICABLE TO BILATERAL INCLUDED ENERGY TRANSACTIONS.—

(1) EXEMPTION FROM REQUIREMENT THAT TRANSACTIONS BE MADE ON OR THROUGH A DESIGNATED CONTRACT MARKET, ETC.—Section 4(a) of such Act (7 U.S.C. 6(a)), as amended by subsection (d)(1) of this section, is amended by inserting “(other than a bilateral included energy transaction)” after “any transaction”.

1 (2) REPORTING AND RECORDKEEPING RE-
2 QUIREMENTS.—

3 (A) IN GENERAL.—Section 4g of such Act
4 (7 U.S.C. 6g) is amended by adding at the end
5 the following:

6 “(g) REQUIREMENTS APPLICABLE TO BILATERAL
7 INCLUDED ENERGY TRANSACTIONS.—

8 “(1) IN GENERAL.—An eligible contract partici-
9 pant that enters into or executes a bilateral included
10 energy transaction shall—

11 “(A) provide to the Commission on a time-
12 ly basis the information required under para-
13 graph (2);

14 “(B) consistent with section 4i, maintain
15 books and records relating to the transaction
16 for at least 5 years after the date of the trans-
17 action, in such form as the Commission shall
18 require; and

19 “(C) keep the books and records open to
20 inspection by any representative of the Commis-
21 sion or the United States Department of Jus-
22 tice.

23 “(2) REQUIRED INFORMATION.—

24 “(A) IN GENERAL.—The Commission shall
25 require eligible contract participants to provide

1 the Commission with such information regard-
2 ing bilateral included energy transactions en-
3 tered into or executed by the participants as the
4 Commission considers necessary to assist in de-
5 tecting and preventing price manipulation.

6 “(B) INFORMATION TO BE PROVIDED.—

7 The information to be provided shall include in-
8 formation regarding large trading positions (as
9 defined by the Commission) obtained through 1
10 or more bilateral included energy transactions
11 that involve—

12 “(i) substantial quantities of the un-
13 derlying energy commodity in the cash
14 market; or

15 “(ii) substantial positions, invest-
16 ments, or trades in agreements or con-
17 tracts related to energy commodities.”.

18 (B) REGULATIONS.—Not later than 180
19 days after the date of the enactment of this
20 Act, the Commodity Futures Trading Commis-
21 sion shall issue a notice of proposed rule-
22 making, and not later than 1 year after such
23 date of enactment, the Commission shall pro-
24 mulgate final regulations, specifying the infor-
25 mation to be maintained and provided under

1 section 4g(g)(2) of the Commodity Exchange
2 Act.

3 (i) PUBLIC DISCLOSURE OF NUMBER AND VALUE OF
4 POSITIONS HELD IN COMMODITY INDEX FUNDS.—Sec-
5 tion 8 of such Act (7 U.S.C. 12) is amended by adding
6 at the end the following:

7 “(j) The Commission shall publish on its website
8 monthly the aggregate number and value of the long posi-
9 tions, and the aggregate number and value of the short
10 positions, that are held by any person in any portfolio con-
11 structed to match or track the components of an index
12 of all commodities, and the portion of the positions that
13 are net long positions in included energy transactions.”.

14 (j) NO EFFECT ON FERC AUTHORITY.—Section 2
15 of such Act (7 U.S.C. 2), as amended by subsection (c)
16 of this section, is amended by adding at the end the fol-
17 lowing:.

18 “(k) NO EFFECT ON FERC AUTHORITY.—This Act
19 shall not be interpreted to affect the jurisdiction of the
20 Federal Energy Regulatory Commission with respect to
21 the authority of the Federal Energy Regulatory Commis-
22 sion under the Federal Power Act (16 U.S.C. 791a et
23 seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or
24 other law to obtain information or otherwise carry out the

1 responsibilities of the Federal Energy Regulatory Commis-
2 sion.”.

3 **SEC. 3. CEASE-AND-DESIST AUTHORITY.**

4 (a) NATURAL GAS ACT.—Section 20 of the Natural
5 Gas Act (15 U.S.C. 717s) is amended by adding the fol-
6 lowing at the end:

7 “(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
8 ORDERS; AUTHORITY OF THE COMMISSION.—If the Com-
9 mission finds, after notice and opportunity for hearing,
10 that any entity may be violating, may have violated, or
11 may be about to violate any provision of this Act, or any
12 rule, regulation, restriction, condition, or order made or
13 imposed by the Commission under the authority of this
14 Act, the Commission may publish its findings and issue
15 an order requiring such entity, and any other entity that
16 is, was, or would be a cause of the violation, due to an
17 act or omission the entity knew or should have known
18 would contribute to such violation, to cease and desist
19 from committing or causing such violation and any future
20 violation of the same provision, rule, or regulation. Such
21 order may, in addition to requiring an entity to cease and
22 desist from committing or causing a violation, require such
23 entity to comply, to provide an accounting and
24 disgorgement, or to take steps to effect compliance, with
25 such provision, rule, or regulation, upon such terms and

1 conditions and within such time as the Commission may
2 specify in such order. Any such order may, as the Commis-
3 sion deems appropriate, require future compliance or steps
4 to effect future compliance, either permanently or for such
5 period of time as the Commission may specify.

6 “(f) HEARING.—The notice instituting proceedings
7 pursuant to subsection (e) shall fix a hearing date not ear-
8 lier than 30 days nor later than 60 days after service of
9 the notice unless an earlier or a later date is set by the
10 Commission with the consent of any respondent so served.

11 “(g) TEMPORARY ORDER.—Whenever the Commis-
12 sion determines that the alleged violation or threatened
13 violation specified in the notice instituting proceedings
14 pursuant to subsection (e), or the continuation thereof, is
15 likely to result in significant dissipation or conversion of
16 assets, significant harm to energy consumers, or substan-
17 tial harm to the public interest, prior to the completion
18 of the proceedings referred to in subsection (e). The Com-
19 mission may issue a temporary order requiring the re-
20 spondent to cease and desist from the violation or threat-
21 ened violation and to take such action to prevent the viola-
22 tion or threatened violation and to prevent dissipation or
23 conversion of assets, significant harm to energy con-
24 sumers, or substantial harm to the public interest, frustra-
25 tion of the Commission’s ability to conduct the pro-

1 ceedings, or frustration of the Commission’s ability to re-
2 dress said violation at the conclusion of the proceedings,
3 as the Commission deems appropriate pending completion
4 of such proceedings. Such an order shall be entered only
5 after notice and opportunity for a hearing, unless the
6 Commission determines that notice and hearing prior to
7 entry would be impracticable or contrary to the public in-
8 terest. A temporary order shall become effective upon
9 service upon the respondent and, unless set aside, limited,
10 or suspended by the Commission or a court of competent
11 jurisdiction, shall remain effective and enforceable pending
12 the completion of the proceedings.

13 “(h) REVIEW OF TEMPORARY ORDERS.—

14 “(1) COMMISSION REVIEW.—At any time after
15 the respondent has been served with a temporary
16 cease-and-desist order pursuant to subsection (g),
17 the respondent may apply to the Commission to have
18 the order set aside, limited, or suspended. If the re-
19 spondent has been served with a temporary cease-
20 and-desist order entered without a prior Commission
21 hearing, the respondent may, within 10 days after
22 the date on which the order was served, request a
23 hearing on such application and the Commission
24 shall hold a hearing and render a decision on such
25 application at the earliest possible time.

1 “(2) JUDICIAL REVIEW.—Within—

2 “(A) 10 days after the date the respondent
3 was served with a temporary cease-and-desist
4 order entered with a prior Commission hearing;
5 or

6 “(B) 10 days after the Commission ren-
7 ders a decision on an application and hearing
8 under paragraph (1), with respect to any tem-
9 porary cease-and-desist order entered without a
10 prior Commission hearing, the respondent may
11 apply to the United States district court for the
12 district in which the respondent resides or has
13 its principal place of business, or for the Dis-
14 trict of Columbia, for an order setting aside,
15 limiting, or suspending the effectiveness or en-
16 forcement of the order, and the court shall have
17 jurisdiction to enter such an order. A respond-
18 ent served with a temporary cease-and-desist
19 order entered without a prior Commission hear-
20 ing may not apply to the court except after
21 hearing and decision by the Commission on the
22 respondent’s application under paragraph (1) of
23 this subsection.

24 “(3) NO AUTOMATIC STAY OF TEMPORARY
25 ORDER.—The commencement of proceedings under

1 paragraph (2) of this subsection shall not, unless
2 specifically ordered by the court, operate as a stay
3 of the Commission’s order.

4 “(4) EXCLUSIVE REVIEW.—Sections 19(d) and
5 24 shall not apply to a temporary order entered pur-
6 suant to this section.

7 “(i) IMPLEMENTATION.—The Commission is author-
8 ized to adopt rules, regulations, and orders as it deems
9 appropriate to implement this subsection.”.

10 (b) FEDERAL POWER ACT.—Section 314 of the Fed-
11 eral Power Act (16 U.S.C. 825m) is amended by adding
12 the following at the end:

13 “(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
14 ORDERS; AUTHORITY OF THE COMMISSION.—If the Com-
15 mission finds, after notice and opportunity for hearing,
16 that any entity may be violating, may have violated, or
17 may be about to violate any provision of this Act, or any
18 rule, regulation, restriction, condition, or order made or
19 imposed by the Commission under the authority of this
20 Act, the Commission may publish its findings and issue
21 an order requiring such entity, and any other entity that
22 is, was, or would be a cause of the violation, due to an
23 act or omission the entity knew or should have known
24 would contribute to such violation, to cease and desist
25 from committing or causing such violation and any future

1 violation of the same provision, rule, or regulation. Such
2 order may, in addition to requiring an entity to cease and
3 desist from committing or causing a violation, require such
4 entity to comply, to provide an accounting and
5 disgorgement, or to take steps to effect compliance, with
6 such provision, rule, or regulation, upon such terms and
7 conditions and within such time as the Commission may
8 specify in such order. Any such order may, as the Commis-
9 sion deems appropriate, require future compliance or steps
10 to effect future compliance, either permanently or for such
11 period of time as the Commission may specify.

12 “(f) HEARING.—The notice instituting proceedings
13 pursuant to subsection (e) shall fix a hearing date not ear-
14 lier than 30 days nor later than 60 days after service of
15 the notice unless an earlier or a later date is set by the
16 Commission with the consent of any respondent so served.

17 “(g) TEMPORARY ORDER.—Whenever the Commis-
18 sion determines that the alleged violation or threatened
19 violation specified in the notice instituting proceedings
20 pursuant to subsection (e), or the continuation thereof, is
21 likely to result in significant dissipation or conversion of
22 assets, significant harm to energy consumers, or substan-
23 tial harm to the public interest, prior to the completion
24 of the proceedings referred to in subsection (e), the Com-
25 mission may issue a temporary order requiring the re-

1 spondent to cease and desist from the violation or threat-
2 ened violation and to take such action to prevent the viola-
3 tion or threatened violation and to prevent dissipation or
4 conversion of assets, significant harm to energy con-
5 sumers, or substantial harm to the public interest, frustra-
6 tion of the Commission's ability to conduct the pro-
7 ceedings, or frustration of the Commission's ability to re-
8 dress said violation at the conclusion of the proceedings,
9 as the Commission deems appropriate pending completion
10 of such proceedings. Such an order shall be entered only
11 after notice and opportunity for a hearing, unless the
12 Commission determines that notice and hearing prior to
13 entry would be impracticable or contrary to the public in-
14 terest. A temporary order shall become effective upon
15 service upon the respondent and, unless set aside, limited,
16 or suspended by the Commission or a court of competent
17 jurisdiction, shall remain effective and enforceable pending
18 the completion of the proceedings.

19 “(h) REVIEW OF TEMPORARY ORDERS.—

20 “(1) COMMISSION REVIEW.—At any time after
21 the respondent has been served with a temporary
22 cease-and-desist order pursuant to subsection (g),
23 the respondent may apply to the Commission to have
24 the order set aside, limited, or suspended. If the re-
25 spondent has been served with a temporary cease-

1 and-desist order entered without a prior Commission
2 hearing, the respondent may, within 10 days after
3 the date on which the order was served, request a
4 hearing on such application and the Commission
5 shall hold a hearing and render a decision on such
6 application at the earliest possible time.

7 “(2) JUDICIAL REVIEW.—Within—

8 “(A) 10 days after the date the respondent
9 was served with a temporary cease-and-desist
10 order entered with a prior Commission hearing;
11 or

12 “(B) 10 days after the Commission ren-
13 ders a decision on an application and hearing
14 under paragraph (1), with respect to any tem-
15 porary cease-and-desist order entered without a
16 prior Commission hearing, the respondent may
17 apply to the United States district court for the
18 district in which the respondent resides or has
19 its principal place of business, or for the Dis-
20 trict of Columbia, for an order setting aside,
21 limiting, or suspending the effectiveness or en-
22 forcement of the order, and the court shall have
23 jurisdiction to enter such an order. A respond-
24 ent served with a temporary cease-and-desist
25 order entered without a prior Commission hear-

1 ing may not apply to the court except after
2 hearing and decision by the Commission on the
3 respondent’s application under paragraph (1) of
4 this subsection.

5 “(3) NO AUTOMATIC STAY OF TEMPORARY
6 ORDER.—The commencement of proceedings under
7 paragraph (2) of this subsection shall not, unless
8 specifically ordered by the court, operate as a stay
9 of the Commission’s order.

10 “(4) EXCLUSIVE REVIEW.—Section 317 shall
11 not apply to a temporary order entered pursuant to
12 this section.

13 “(i) IMPLEMENTATION.—The Commission is author-
14 ized to adopt rules, regulations, and orders as it deems
15 appropriate to implement this subsection.”.

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